



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: National Linen Service

File: B-285458

Date: August 22, 2000

James J. McCullough, Esq., and Catherine E. Pollack, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.

Col. Nicholas P. Retson, and Maj. Howard W. Roth, III, Department of the Army, and John W. Klein, Esq., and Audrey H. Liebross, Esq., Small Business Administration, for the agencies.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly set acquisition aside for exclusive small business participation is denied where record shows that agency had a reasonable basis to anticipate that it would receive offers from at least two responsible small business concerns, and that award would be made at a fair market price.

DECISION

National Linen Service protests the terms of invitation for bids (IFB) No. DAKF40-00-B-0006, issued by the Department of the Army for medical linen laundry services at Womack Army Medical Center (WAMC), Fort Bragg, North Carolina. National, a large business, contends that the agency improperly issued the solicitation as a total small business set-aside.

We deny the protest.

The IFB, issued on May 11, 2000, as a 100-percent small business set-aside, contemplates the award of a requirements contract, for a base year and 4 option years, to the responsible bidder submitting the low conforming bid. IFB ¶¶ 52.212-2(a), 52.216-21; Agency Memorandum of Law at 1. The awardee is to provide the personnel, materials, transportation, supplies, equipment, and facilities for laundry services for approximately 90,000 to 100,000 pounds per month of WAMC medical linens. IFB Statement of Work ¶¶ 1, 5, Technical Exh. 1.

The protester contends that the agency failed to perform sufficient market research to support a reasonable expectation of receiving at least two bids from responsible small business concerns at fair market prices. National suggests that, although the required services are currently being performed by a small business, neither the incumbent nor any other capable small business is located in the local geographic area. National contends that the additional transportation costs for out-of-town small businesses, such as the incumbent, will result in an award price exceeding the fair market price for the services.¹ National contends that as a local large business, it can supply the services at a significantly lower price and that the agency's market research was inadequate because the contracting officer did not consider potential large business prices for the work.

Under Federal Acquisition Regulation (FAR) § 19.502-2(b), a procurement with an anticipated dollar value of more than \$100,000 must be set aside for exclusive small business participation when there is a reasonable expectation of receiving offers from at least two responsible small business concerns and that award will be made at a fair market price. American Med. Response of Conn., Inc., B-278457, Jan. 30, 1998, 98-1 CPD ¶ 44 at 2. The use of any particular method of assessing the availability of small businesses is not required so long as the agency undertakes reasonable efforts to locate responsible small business competitors. The decision whether to set aside a procurement may be based on an analysis of factors such as the prior procurement history, the recommendations of appropriate small business specialists, and market surveys that include responses to Commerce Business Daily (CBD) announcements. SAB Co., B-283883, Jan. 20, 2000, 2000 CPD ¶ 58 at 1-2; Litton Electron Devices, B-225012, Feb. 13, 1987, 87-1 CPD ¶ 164 at 2-3. Because a decision whether to set aside a procurement is a matter of business judgment within the contracting officer's discretion, our review generally is limited to ascertaining whether that official abused his or her discretion. CardioMetrix, B-271012, May 15, 1996, 96-1 CPD ¶ 227 at 2. We will not question a small business set-aside determination where the record shows that the evidence before the contracting officer was adequate to support the reasonableness of the conclusion that small business competition reasonably could be expected. Litton Electron Devices, *supra*.

The agency reports that its set-aside determination was based on several factors. First, in considering the procurement history, the agency found that the current,

¹ In its protest, National initially asserted that the incumbent was currently providing the required services at an unreasonably high price under a contract awarded in 1997. Protest at 5. The agency has explained, however, that the current medical linen requirements were only recently added by modification to the incumbent's 1997 contract (which contract had provided for other laundry services at Fort Bragg). The agency reports that under the recent contract modification, it is paying substantially less for the medical linen services than the amount alleged by the protester. Agency Comments at 1-2.

predecessor, and earlier contracts for the same services had been performed by small businesses at reasonable prices. Contracting Officer's Statement at 1; Agency Comments at 2. Next, the agency conducted market research as to small business capability and interest, which included: conducting a search on the Small Business Administration's (SBA) PRO-Net computerized database to identify small business laundry sources; contacting businesses identified by that search for expressions of interest in the current procurement; reviewing the local telephone directory for additional small business sources; communicating with previous small business suppliers of these services at WAMC; and obtaining statements of interest from the other small businesses that requested copies of the solicitation in response to the agency's CBD announcement of the procurement. Agency Memorandum of Law at 2. Additionally, the agency sought and obtained the concurrence of the cognizant SBA Procurement Center Representative and the Small and Disadvantaged Business Utilization Specialist as to the propriety of the contracting officer's determination to set the procurement aside for 100-percent small business participation. Id.

As a result of its market research efforts, the agency identified at least three small business concerns that confirmed an intention to compete for the requirement--two of the small businesses previously performed the same services at WAMC (at prices determined to be reasonable), and the third small business confirmed having similar contracts and an interest in competing under the IFB. The agency explains that the contracting officer's anticipation of adequate price competition among, at least, the identified experienced firms led to the expectation that award would be made at a fair market price. Id. at 3; Agency Comments at 2, citing FAR § 15.404-1(b)(2)(i) (stating that adequate price competition normally establishes price reasonableness).

National does not challenge the agency's position that at least three small businesses confirmed an intention to compete under the IFB. The protester also does not challenge those small businesses' capabilities to perform the contract. Rather, National challenges as unreasonable the agency's asserted expectation that award will be made at a fair market price since the agency did not consider large businesses' prices for the services. The protester argues that the set-aside determination is improper because it was made without "assurance" that award will be made at a fair market price. Protester's Comments at 5.

As a preliminary matter, to the extent that National asserts that the contracting officer must obtain "assurance" of fair market pricing before setting a procurement aside, National is incorrect. Although a contract may not be awarded as a result of a small business set-aside if the cost to the awarding agency exceeds the fair market price, FAR § 19.501(h), prior to making a set-aside determination, the agency need only have a reasonable expectation of award at a fair market price. See FAR § 19.502-2(b). We conclude that the agency had such a reasonable expectation here. As stated above, prior to setting the current requirement aside, the agency considered procurement history showing that the requirement had been performed successfully by small businesses at prices considered reasonable. Moreover, as a result of its market research, the agency learned that at least the two incumbent

small businesses and a third firm intend to compete for the requirement, and the agency received expressions of interest from several additional small businesses. Under these circumstances, we conclude that it was reasonable for the agency to anticipate adequate price competition, and that, as result of that price competition, award would be made at a fair market price under the set-aside procurement. Contrary to National's argument, where, as here, the evidence before the contracting officer otherwise supports a reasonable expectation that award to a small business will be at a fair market price, we see no basis to conclude that the agency must ascertain the prices that large businesses might bid before it decides to set aside a procurement.² Accordingly, we see no reason to question the agency's determination to set the procurement aside for exclusive small business participation.³

The protest is denied.

Robert P. Murphy
General Counsel

² In this regard, a small business bidder's price is not unreasonable merely because it is higher than the price of an ineligible large business, since there is a range over and above the large business's price that may be considered reasonable in a set-aside situation. See Hardcore DuPont Composites, L.L.C., B-278371, Jan. 20, 1998, 98-1 CPD ¶ 28 at 3. Moreover, while the protester states that it "believes" that, as a large business located closer to the medical center than the identified small businesses, its bid for the services would be significantly lower than any small business bid, this contention is purely speculative and unsupported by any evidence in the record.

³ For the record, we note that, in a July 10, 2000 report on the protest prepared at our request, SBA concluded that the set-aside was proper in view of the prior procurement history and the expressions of interest received from other small businesses.